CF0000060157

Cri A 2592/98 (2)

APPEAL OF PRISONER

DB(Cri)

No. 420/98 Name BULCHU

Father's name बूलचू BHAGUR भागुड

Residence सा सिलपिली थाना शंकरगढ़ Age 30

Sentenced आजीवन सश्रम कारावास On 24/7/98 24-7-98

Under section 302, 452, 211 IPC by श्री के. नारायण द्वितीय अपर सत्र न्यायाधीश अम्बिकापुर

SCR: 3/97

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 24/7/98
2. Date of which copy received 24/7/98
3. Date on which appeal sent 25-7-98
4. Whether the prisoner wished to be represented or not-Yes/No.

No. 420/98 Name बुलचू पि० भागुड

Continued in जिला Jail अम्बिकापुर

No. 1812 Dated 25/7/98 199

Forward to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

संलग्न निर्णयप्रति 5पन्ना

अधीक्षक 25/7/98
जिला जेल अम्बिकापुर (सरगुजा)

Superintendent Jail

Date of receipt in C.J.M's Office 27-7-98

Date of receipt record to accompany 29-7-98

Memo of Appeal of the Appeliate Court उच्च न्यायालय ग्वालियर जबलपुर

No. 8 Dated 31-7 1998

Forwarded to the उच्च न्यायालय ग्वालियर जबलपुर

C.J. Magistrate

Date of receipt in Appeliate Court

जिला न्यायिक मजिस्ट्रेट अम्बिकापुर

//SURGUJA TY.//

* * *

With in Time

(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No.2592/98 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. Hon'ble Shri L.C.Bhadoo,
Hon'ble Shri Dilip R. Deshmukh, JJ.

20.06.2005

Appellant by Shri Abhay Tiwari, Advocate.

State by Shri U.N.S.Deo, Govt. Advocate.

Oral order.

Heard.

2. The accused appellant has preferred this appeal being aggrieved by the judgment of conviction and sentence passed by the 2nd Additional Sessions Judge, Ambikapur in Sessions trial No.3/1997 dated 24.7.1998 whereby the learned Additional Sessions Judge after convicting the accused-appellant for the commission of offence under Sections 302, 182 and 211 of the I.P.C. sentenced him to undergo imprisonment for life and 3 months rigorous imprisonment in each of the offences under Section 182 and 211 I.P.C.

3. The brief facts leading to filing of this appeal are that in the night of 10.11.1996 accused Bulchu and his wife consumed liquor and took dinner in the house of Manglu. Manglu was accompanying the accused-appellant and his wife when they

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

were returning from the house of Manglu after taking the dinner and consuming liquor. Bulchu was ahead of his wife and Manglu. At that time Bulchu brought stick from his house and started assaulting Asadi Bai with stick. On seeing this, Manglu ran away and Asadi Bai died in the night. Matter was reported on 11.11.1996 at 3.00 P.M. to the police station Shankargarh. On receiving report the first information Ex.P.8 was registered at Crime No.52/1996 under Section 302 I.P.C. After registration of the case, the Investigating Officer reached the spot and after giving notice Ex.P.1 to the witnesses prepared the Panchnama Ex.P.2 of the body. Thereafter body was sent for Post-mortem examination vide letter Ex.P.11. Dr. Pritam Ram P.W.10 conducted the post-mortem on the body of Asadi Bai and prepared report Ex.P.20. He noticed as many as nine injuries on the body of the Asadi Bai. The Doctor found that there was compound fracture on the head of Asadi Bai. She received injury on the lung also. In his opinion the nature of death was homicidal. She died on account of shock due to injury on the head and lung injury.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. The learned Additional Sessions Judge after recording the prosecution evidence and statement under Section 313 of Cr.P.C. and after hearing the arguments of counsel of the accused-appellant and the Public Prosecutor, convicted the accused-appellant in the manner mentioned above.

5. We have heard the learned counsel for the accused-appellant and Shri U.N.S.Deo on behalf of the State.

6. At the outset, learned counsel accused/appellant did not challenge the conviction recorded by the trial Court under Section 182 & 211 of the I.P.C. The learned counsel for the accused appellant also did not argue on merits of the appeal. He simply argued that the facts of the case show that the accused-appellant assaulted Asadi Bai in the heat of passion ~~as a result of quarrel took place between the two~~ and both were in intoxication stage. There was no intention of the accused-appellant to commit the murder of his own wife, therefore, he argued that the offence does not travel beyond section 304 Part-II of the I.P.C.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	7. On the other hand, the learned Govt. Advocate Mr. U.N.S.Deo while supporting the judgment of the lower Court argued that the manner in which the accused assaulted his wife and caused as many as nine injuries shows that the accused assaulted Asadi Bai with an intention to commit her murder. 8. As far as involvement of the accused in the offence is concerned, from the evidence of P.W. 1 Bifni Bai and P.W.2. Jhirgi Bai, it is evident that after assaulting Asadi Bai, accused reached to the house of Bifni Bai, made extra judicial confession before her that he has assaulted Asadi Bai and asked her to go and provide water to her, on hearing this Bifni Bai reached the spot. She saw the Asadi Bai was lying in injured condition. Asadi Bai also informed Bifni Bai that the accused-appellant assaulted her. The above evidence of Bifni Bai has been corroborated by P.W.2 Jhirgi Bai. She has also stated that the accused made extra judicial confession before her. On receiving information from the accused, she also reached the spot where Bifni Bai was already standing. She further stated that the	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased also made a dying declaration to her about the injury caused by the accused-appellant.

9. In cross-examination of these two witnesses, the counsel for the accused has not been able to bring out any circumstance which makes the evidence of these two witnesses unreliable. Apart from that, P.W.5 Manglu who was an eye witness to the incident has stated that accused and his wife-Asadi Bai came to his house for taking dinner and consuming liquor on account of Deepawali festival, after taking dinner and consuming liquor, Balchu and his wife-Asadi Bai left for their house. He also accompanied them. He has stated that accused Balchu was ahead of them. He and Asadi Bai were following him. The accused after reaching his house came back with a stick and started assaulting Asadi Bai, as a result of which she received injuries on head, hand and leg. On seeing this attack, he ran away from the place of occurrence.

10. Counsel for the accused could not elicit anything in the cross-examination of this witness also which makes the evidence of this witness doubtful and unreliable. Therefore, in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	view of the ocular evidence as well as dying declaration of Asadi Bai regarding the involvement of the accused in assaulting Asadi Bai and extra judicial confession made by accused before P.W.1 and P.W.2. Dr.Pritamram P.W.10 who conducted the post-mortem on the body of Asadi Bai found as many as nine injuries, 7th rib was fractured and there was compound fracture on the head and he has opined that the death of Asadi Bai was homicidal in nature. 11. Now coming to the arguments advanced by the learned counsel for the appellant that accused and deceased Asadi Bai, the wife of the accused, both were in the stage of intoxication as they consumed liquor at the house of Manglu. There was no intention of the accused for committing murder of his own wife. 12. In this connection, if we look into the law as laid down by the Apex Court in the matter of Mahesh Vs. State of M.P., **1996 (6) Supreme 609**, the facts of the case were that the deceased objected to the appellant not let his cattle damage the crop. The appellant, however did not pay any heed to the request of the deceased and insisted that he would graze the	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

cattle in that field and altercation ensued between the deceased and the accused. In that process the appellant dealt a pharsa blow on the head of the deceased Krishna Kumar as a result of which he died on the spot. On these facts the Hon'ble Apex Court held that on the facts and in the circumstances, the accused during a sudden quarrel without premeditation assaulted the deceased, therefore, the offence will fall within Exception-4 to Section 300 of I.P.C. and accused was held guilty for commission of offence under Section 304 part-I I.P.C. Similarly, in the matter of State of Rajasthan Vs. Satyanarayana reported in **1998 (1) Supreme 433,** the accused Satyanaraya was neighbour of Bhima. Some quarrel took place between Bhoridevi wife of Bhimaand the accused. Tthere was exchange of words between her and Satyanarayana. In that process, the accused appellant assaulted Bhoridevi with an iron pipe. He also injured Ram Gopal and then went back to the house. By that time, Kesar Lal (deceased), brother of Bhima, went near the house of accused and started questioning the accused as to why he was quarrelling like that in the morning. Thereupon the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused came out of his house with a knife and inflicted a blow on the abdomen of Kesar Lal as a result of which his intestines came out and he died and the accused ran away. On these facts, the Apex Court held that "the respondent had not aimed the blow on any vital part of Ram Gopal or Kesar Lal. The blow was aimed at Ram Gopal but as he moved aside, it landed on the stomach of Kesar Lal." Therefore, the Court held that the appellant should have been convicted under Section 304 Part-I of the I.P.C. and not under Section 302 I.P.C.

13. In the matter of Gendlal V. State of M.P. reported in **2003 (1) M.P.L.J. 46,** the Division Bench of the M.P.High Court has held on facts that during the altercation between accused and his wife, the accused dealt with some blows on her with two feet bamboo-stick and account of excessive bleeding she died and the Court held that there was no motive, prior ill-will or intention to cause her death.

14. In the light of the above judgments, if we look into the facts and evidence of the present case, P.W.5 is an eye witness to the incident who has simply stated that after taking dinner

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 9 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and consuming liquor at his residence the accused appellant and his wife-Asadi Bai left for their home. The accused appellant was ahead of them and Asadi Bai and Manglu were following the accused, all of sudden, the accused brought a lathi from his house and started assaulting Asadi Bai. This witness has stated in cross-examination that since morning they consumed liquor and they were in stage of intoxication. If we look into the last line of the cross-examination of the Sub-Inspector (Investigating Officer) that the witness Matnu told him that the accused appellant informed Matnu that ~~he has assaulted his wife because~~ he saw his wife and Mangnu in a compromising position. Manglu P.W.5 in his evidence has nowhere stated that the accused assaulted Asadi Bai with a pre-plan. On the other hand, from the evidence, it is apparent that when all the three were returning to house, accused all of sudden brought a stick from his house and started assaulting his wife. All were in the stage of intoxication and moreover from the evidence of Investigating Officer, it has come on record that Matnu informed him that the accused informed Matnu that he

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —10—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

saw Asadi Bai and Manglu in a compromising position. It appears from the facts, the accused while in stage of intoxication assaulted his wife in a heat of passion without any premeditation and pre-plan, therefore, there is nothing on record which goes to show that accused assaulted his wife with pre-plan or pre-meditation or with the intention to kill his wife. However, looking to the evidence which can safely be inferred that the manner in which the accused assaulted Asadi Bai, he had a knowledge that assaulting Asadi Bai in such a manner may likely to cause death. Therefore, in view of the law laid down by the Apex Court in the above cited cases, we are of considered opinion that the prosecution has not been able to establish the offence under Section 302 I.P.C. However, on facts the offence under Section 304 Part II was made out.

15. Similarly, in the matter of Mankeram V. State of Haryana, reported in **2004 SCC (Cri) 106**, the Apex Court on the facts and circumstances of the case held that the conviction of appellant for offence punishable under Section 302 I.P.C. is not made out and it is converted to Section 304 Pt.II I.P.C. The

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -18-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

facts of that case were that the incident took place at the residential part of the appellant's quarters in Sangatpura where the appellant was the incharge of the police post. When the appellant came back from his duty, he saw Suraj Mal, the deceased, who was a Head Constable in the Sangatpura Police Outpost was standing outside the quarter of appellant in the company of his nephew. On seeing them, the appellant invited Suraj Mal for a drink in his room. The deceased went with the appellant to his room leaving nephew outside. While the appellant and Suraj Mal were drinking in his room at about 9.45 P.M., nephew went into the room and asked Suraj Mal to get up so that they could have their dinner. Suraj Mal accepted to this request, because of which, the appellant got annoyed and abused the deceased in filthy language to which the deceased objected, which further annoyed the appellant and picking his service revolver fired two shorts at Suraj Mal, hitting him on the right side of the neck and left side of his thigh. Thereafter the prosecution case further proceeds by stating that two of them grappled with each other and came outside the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -12-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

room. On these facts, the Court was required to consider that whether the action of the appellant which caused death of Suraj Mal would amount to murder or culpable homicide not amounting to murder. The Court held that there was no enmity between the appellant and the deceased. Both the deceased and appellant posted at one Police post and the appellant invited the deceased to his room to have a drink which was accepted by the deceased and both of them were drinking in the room of the appellant and at that point of time the nephew of the deceased came into the room and interrupted their drinking sessions by asking his uncle to get up and join him for dinner which was obviously not liked by the appellant who being offended by the said interruption started abusing in a language which was not to the liking of the deceased who protested against such abuses. The Court further held that there was no motive for killing the deceased and the incident in question took place in a sudden fight in the heat of passion. The question was whether the appellant did take an undue advantage of the said fight or acted in a cruel or unusual manner. Keeping in mind

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -13-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the fact that both the appellant and deceased had consumed considerable amount of alcohol which is established from the evidence of the doctor and the service revolver being next to the place where the fight took place and was not kept there by a planned act by the appellant, it cannot be altogether ruled out that the shots were fired not with an intention of taking any undue advantage by the appellant. It is probable that in an inebriated condition the appellant used the service revolver because of the physical fight between the two and the Court also held that the appellant could only be found guilty of an offence punishable under Section 304 Part II.

16. Similarly, in the present case, it is admitted position that accused and deceased both were consuming liquor since morning at the residence of Manglu. As per the evidence of Investigating Officer, Matnu informed him that accused disclosed to Matnu that once he saw Manglua and his wife in a compromising position, therefore, the accused was in stage of intoxication and having in his mind that his wife and Manglu are having illicit relations. That fact must have infuriated that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –14	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused in a heat passion without premeditation and preparation, accused all of sudden brought stick from his house and started assaulting his wife Asadi Bai as such on these facts of circumstances, it can not be inferred that accused assaulted his wife with the intention to commit her murder. Therefore, prosecution has not been able to establish offence under Section 302 of I.P.C. Instead thereof offence under Section 304 Part I is made out.

17. In the result, ~~While maintaining the conviction~~, the appeal is partly allowed and accused appellant is acquitted of the charge of 302 I.P.C. and instead thereof he is convicted under Section 304 Part I of the I.P.C and sentenced to undergo 10 years Rigorous Imprisonment and fine of Rs.500/-, in default of payment of fine, he has to further undergo three months R.I. The accused appellant is entitled for set-off for the period for which he remained in police and judicial custody during the investigation and trial. The conviction and sentence under Section 182 and 211 of I.P.C. are maintained.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani

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29.6.05